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## FEDERAL ELECTION COMMISSION

2004 FEB 18 P 4: 47  
999 E Street, N.W.  
Washington, D.C. 20463

**SENSITIVE****FIRST GENERAL COUNSEL'S REPORT**

Audit Referral No.: 03-06  
Audit Referral Date: July 24, 2003  
Date Activated: Sept. 24, 2003

Expiration of Statute  
of Limitations: January 1, 2004-  
January 31, 2006<sup>1</sup>

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16 SOURCE: Internally Generated Audit Referral

18 RESPONDENTS: Republican Party of Arkansas and Blair L. Fortner,  
as treasurer  
Potlatch Corporation

22 RELEVANT STATUTES:<sup>2</sup>

2 U.S.C. § 432(c)  
2 U.S.C. § 432(d)  
2 U.S.C. § 433(b)(6)  
2 U.S.C. § 433(c)  
2 U.S.C. § 434(b)(1)  
2 U.S.C. § 434(b)(2)  
2 U.S.C. § 434(b)(3)(A)-(D) and (G)  
2 U.S.C. § 434(b)(4)  
2 U.S.C. § 434(b)(5)(A)  
2 U.S.C. § 434(b)(6)(B)(i) and (iii)  
2 U.S.C. § 434(b)(8)  
2 U.S.C. § 441a(a)(2)(A)  
2 U.S.C. § 441a(f)  
2 U.S.C. § 441b  
11 C.F.R. § 102.5(a)  
11 C.F.R. § 102.9(a)

<sup>1</sup> The applicable statute of limitations date for the making of a prohibited contribution by Potlatch Corporation is March 22, 2005. The applicable statute of limitations for the Republican Party of Arkansas's reports and transactions that are the basis for violations expire on a rolling basis starting in January 2004 and extending to January 31, 2006, or longer depending on whether continuing violations are involved. See Appendix A.

<sup>2</sup> The activity in this matter is governed by the Federal Election Campaign Act of 1971, as amended ("the Act"), and the Commission regulations in effect prior to amendments made by, or as a result of, the Bipartisan Campaign Reform Act of 2002 ("BCRA")

11 C.F.R. § 102.9(b)  
11 C.F.R. § 102.9(c)  
11 C.F.R. § 104.3(a)(4)(iii)(B)  
11 C.F.R. § 104.3(a)(4)(iv)  
11 C.F.R. § 104.3(b)(3)(i)  
11 C.F.R. § 104.10(b)  
11 C.F.R. § 104.11  
11 C.F.R. § 106.5(a)  
11 C.F.R. § 106.5(g)

INTERNAL REPORTS CHECKED:    Audit Documents  
   Disclosure Documents

FEDERAL AGENCIES CHECKED:    None

**I.     INTRODUCTION**

The Commission audited the Republican Party of Arkansas ("the RPA") for the 2000 election cycle pursuant to 2 U.S.C. § 438(b). The Audit Division referred this matter to the Office of the General Counsel as a result of that audit. See Attachment 1. This Office has examined the referral and, based on the findings therein, believes that the Commission should pursue a compliance action against the RPA.

This is the second referral resulting from an audit of the RPA within the last three election cycles. The Commission pursued a compliance action against the RPA based on an earlier referral arising out of a 2 U.S.C. § 438(b) audit of its financial activities during the 1998 election cycle.<sup>3</sup> The Commission accepted a conciliation agreement in that matter, MUR 5235,

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<sup>3</sup> The field work for the 1998 election cycle audit took place from November 1-19, 1999. An interim audit report for that audit was sent to the RPA on July 27, 2000 detailing many of the same kinds of problems at issue in the instant referral, such as failing to itemize contributions, failing to properly disclose receipts, failing to maintain adequate records of receipts and failing to allocate shared expenses and to pay for them through a federal account. Therefore, the RPA had notice during the latter part of the 2000 election cycle that some of its practices were problematic

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on October 3, 2002. In the agreement, the RPA admitted violations resulting from some of the same conduct at issue in the current audit referral and paid a \$45,000 civil penalty.

**II. FINDINGS INCLUDED IN THE AUDIT REFERRAL**

The audit found that the RPA misstated its 1999 and 2000 financial activity; accepted possible excessive and prohibited contributions; failed to maintain records of contributions and disbursements; failed to itemize contributions from individuals and political committees and transfers from affiliated committees; failed to adequately disclose reported transfers from affiliates and disbursements; underpaid its federal share of allocable activity by as much as \$1,576,104; used up to \$136,037 in non-federal funds to pay for expenses for which it may have been required to use 100% federal funds or to allocate, and failed to report these disbursements; failed to pay for federal and allocable disbursements through a federal account; made apparent excessive disbursements totaling \$333,021 on behalf of a federal candidate; failed to itemize outstanding debt; and failed to disclose the RPA's bank depositories. *See* Attachment 1 and Appendix A.

A number of the referral findings stem from the RPA's failure to maintain records of contributions and disbursements and to provide information supporting its allocation or non-allocation of certain disbursements. *See* footnote 11. Moreover, the RPA chose not to respond to either the Interim Report or the Final Audit Report. Consequently, many of the referral findings are based on presumptions that the RPA could have confirmed or refuted by providing documents within its control (e.g., from its banks and vendors) and perhaps, in some cases, by providing affidavits with reasonable explanations. For example, because the RPA provided no supporting materials explaining the basis for allocating disbursements between its federal and non-federal accounts, over \$2 million in disbursements is potentially 100% federal activity. *See,*

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1 *e.g.*, Finding 8A (the RPA's underpayment of the federal share of allocable disbursements).<sup>4</sup>  
2 Attachment 1 at 14-17. Similarly, because the RPA did not provide check copies attributable to  
3 certain deposit slips that list only a name and amount, a determination cannot be made as to  
4 whether any of the underlying checks may be contributions attributable to joint account-holders  
5 in accordance with the Commission's new rules permitting presumptive reattributions.<sup>5</sup> Thus,  
6 these items are treated as possible excessive contributions in the Final Audit Report. *See* Finding  
7 2 in Attachment 1 at 5-7.

8 Based on the audit referral, this Office recommends that the Commission find reason to  
9 believe that the Republican Party of Arkansas and Blair L. Fortner, as treasurer ("Respondents")  
10 violated the Act and Commission regulations, as indicated in the chart at Appendix A. Given the  
11 RPA's failure to date to clarify the record, this Office believes it is appropriate at this stage of the  
12 enforcement proceedings for the Commission to make its reason-to-believe findings based on the  
13 presumptions underlying the referral findings.<sup>6</sup> As discussed more fully in Section III, should the  
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<sup>4</sup> Another factor contributing to the underpayment of the federal share of allocable expenses is the RPA's improper calculation of the ballot composition ratio, which understated the federal percentage of allocable activity by 8%. That portion of the underpayment would remain regardless of whether the RPA produced additional documentation otherwise supporting the allocable nature of the disbursements in question.

<sup>5</sup> Where possible, at the Commission's direction, the new presumptive redesignation/retribution rules were applied to possible excessive contributions identified in this audit.

<sup>6</sup> Finding No. 9 of the audit referral (Attachment 1 at 18-20), in the absence of clarifying information from the RPA, suggests several possible legal theories for the \$331,021 excessive disbursement on behalf of a federal candidate. The theories differ depending on the content of the underlying communications attributable to these disbursements: (1) a possible excessive contribution if the disbursements were for a coordinated expenditure since the available 2 U.S.C. § 441a(d) limit had been virtually exhausted; (2) a possible unreported independent expenditure if the disbursements were for a communication that contained express advocacy; or (3) an overpayment of the non-federal portion of an allocated activity if the disbursements were for so-called issue advertisements. At this time, we are asking the Commission to make findings based on all three legal theories.

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1 RPA or other parties provide relevant materials, some violations could be obviated or the  
2 amounts in violation could be reduced.

3 This Office also recommends that the Commission find reason to believe that the Potlatch  
4 Corporation violated 2 U.S.C. § 441b. Potlatch Corporation is a Delaware corporation registered  
5 to do business in Idaho and Arkansas, and, as noted in the referral, the \$5,000 contribution it  
6 made to the RPA appears to have been drawn on a corporate account rather than on its separate  
7 segregated fund. Attachment 1 at 11.

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13 Additionally, this Office does not recommend generating the Dickey for Congress  
14 Committee as a respondent at this time pending receipt of additional information from the RPA  
15 about the disbursements reported as made for "Jay Dickey Media" and "Consulting for Jay  
16 Dickey."<sup>8</sup> See Attachment 1 at 19.

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<sup>8</sup> We have found in the public domain videotaped copies of four so-called issue advertisements concerning Republican Jay Dickey and/or his Democratic opponent in the 2000 general election for U.S. Representative in Arkansas' Fourth Congressional District. Each advertisement contains an RPA disclaimer and appears to have been broadcast in either October or November 2000. We will attempt to determine from the RPA whether these disbursements and other disbursements encompassed in Finding 8A were related to these advertisements and whether there were others. Copies of the advertisements, downloaded from *The Hotline's* "Ad Spotlight" guide, may be viewed at Ntsrv\logcproj\Commissioners\AR 03-06

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**III. CONCILIATION AND INVESTIGATION**

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IV. **RECOMMENDATIONS**

1. Open a MUR.
2. Find reason to believe that the Republican Party of Arkansas and Blair L. Fortner, as treasurer, violated 2 U.S.C. §§ 434(b)(1), (2) and (4) for misstating its 1999 and 2000 financial activity.
3. Find reason to believe that the Republican Party of Arkansas and Blair L. Fortner, as treasurer, violated 2 U.S.C. § 441a(f) for accepting excessive contributions.
4. Find reason to believe that the Republican Party of Arkansas and Blair L. Fortner, as treasurer, violated 2 U.S.C. § 441b for accepting prohibited contributions.
5. Find reason to believe that the Republican Party of Arkansas and Blair L. Fortner,

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as treasurer, violated 2 U.S.C. §§ 432(c) and (d) and 11 C.F.R. §§ 102.9(a), (b) and (c) for failing to maintain records of contributions and disbursements.

6. Find reason to believe that the Republican Party of Arkansas and Blair L. Fortner, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(A), (B), (C), (D) and (G) for failing to itemize contributions from individuals, contributions and other receipts from political committees and transfers from affiliated committees.
7. Find reason to believe that the Republican Party of Arkansas and Blair L. Fortner, as treasurer, violated 2 U.S.C. § 434(b)(3)(D) and 11 C.F.R. § 104.3(a)(4)(iii)(B) for failing to correctly report transfers from affiliates.
8. Find reason to believe that the Republican Party of Arkansas and Blair L. Fortner, as treasurer, violated 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.3(b)(3)(i) for failing to correctly report disbursements for operating expenditures.
9. With respect to Findings 8A and 8B of the audit referral, find reason to believe that the Republican Party of Arkansas and Blair L. Fortner, as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b, 11 C.F.R. §§ 102.5(a), 106.5(a), 106.5(g) and 104.10(b) by using impermissible funds from its non-federal accounts to pay for federal expenses and the federal share of allocable expenses, by failing to allocate certain expenses, by failing to pay for federal and allocable expenses from a federal account and by failing to report certain federal and allocable expenses.
10. With respect to Finding 9 of the audit referral find reason to believe that the Republican Party of Arkansas and Blair L. Fortner, as treasurer, violated 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.10(b) for incorrectly reporting allocable disbursements and 2 U.S.C. §§ 441b, 441a(f) and 11 C.F.R. §§ 102.5(a), 106.5(a) and 106.5(g) by making disbursements for a portion of the federal share of allocable activity from a non-federal account containing impermissible funds, by improperly allocating disbursements for joint activity, and by failing to make payments for allocable disbursements through a federal account;

and, in the alternative:

find reason to believe the Republican Party of Arkansas and Blair Fortner, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) for making excessive in-kind contributions on behalf of a federal candidate, 2 U.S.C. § 434(b)(6)(B)(i) by failing to report the contributions; and 2 U.S.C. §§ 441b and 441a(f) and 11 C.F.R. § 102.5(a) by making disbursements for federal activity from a non-federal account containing impermissible funds;

and, in the alternative:

find reason to believe that the Republican Party of Arkansas and Blair Fortner, as treasurer, violated 2 U.S.C. § 434(b)(6)(B)(iii) for failing to report an independent expenditure made on behalf of a federal candidate, and 2 U.S.C. §§ 441(b) and 441a(f) and 11 C.F.R. § 102.5(a) by making disbursements for federal activity from a non-federal account containing impermissible funds.

11. Find reason to believe that the Republican Party of Arkansas and Blair L. Fortner, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11 for failing to itemize certain outstanding debt.
12. Find reason to believe that the Republican Party of Arkansas and Blair L. Fortner, as treasurer, violated 2 U.S.C. §§ 433(b)(6) and 433(c) for failing to amend the Committee's Statement of Organization to disclose its bank depositories.
13. Find reason to believe that Potlatch Corporation made a prohibited contribution in violation of 2 U.S.C. § 441b.
14. Approve the attached Factual and Legal Analyses (2).
15. Enter into conciliation with the Republican Party of Arkansas and Blair Fortner, as treasurer, prior to a finding of probable cause to believe, subject to execution of an agreement to extend the statute of limitations.
16. Enter into conciliation with the Potlatch Corporation prior to a finding of probable cause to believe.
17. Approve the attached Conciliation Agreements (2).
18. Approve the use of compulsory process to investigate this matter, including subpoenas and orders to submit written answers directed to the Republican Party of Arkansas, Firststar Bank (formerly Mercantile Bank); Bank of America; Strategic Media Services; Olsen & Delisi; Vista Productions; Metzner Media; Millenium Marketing; Direct Strategies; Bill Freeman Consulting Services; Olympia; John Hudgen's Advertising; Targeted Creative Communication; the Republican National Committee; and the National Republican Congressional Committee; and appropriate additional orders to submit written answers and subpoenas for documents and depositions, as necessary.

19. Approve the appropriate letters.

Lawrence H. Norton  
General Counsel

2/18/04  
Date

BY: Rhonda J. Vosdigh  
Rhonda J. Vosdigh  
Associate General Counsel  
for Enforcement

Sidney Rocke  
Sidney Rocke  
Assistant General Counsel

Dawn M. Odrowski  
Dawn M. Odrowski  
Attorney

Attachments:

1. Audit Referral Materials
2. Potlatch Corporation Conciliation Agreement
3. Republican Party of Arkansas Conciliation Agreement
4. Factual and Legal Analysis (Potlatch Corp.)
5. Factual and Legal Analysis (RPA)

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